

FEB 23 2009

**Board of Vocational Nursing  
and Psychiatric Technicians**

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9 **BEFORE THE**  
10 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2007-79

13 ALTA JANE HARSH  
24783 Cornstalk Road  
14 Wildomar, CA 92595

**A C C U S A T I O N**

15 Vocational Nurse License No. VN 223312

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this  
21 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational  
22 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about October 4, 2006, the Board of Vocational Nursing and  
24 Psychiatric Technicians issued Vocational Nurse License Number VN 223312 to Alta Jane  
25 Harsh (Respondent). The Vocational Nurse License was in full force and effect at all times  
26 relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

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1                   8.       Section 2878 of the Code states:

2                   The Board may suspend or revoke a license issued under this chapter [the  
3 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of  
the following:

4                   (a) Unprofessional conduct, which includes, but is not limited to, the  
5 following:

6                   ....

7                   (f) Conviction of a crime substantially related to the qualifications,  
functions, and duties of a licensed vocational nurse, in which event the record of  
8 the conviction shall be conclusive evidence of the conviction.

9                   ....

10                  (g) The commission of any act involving dishonesty, when that action is  
related to the duties and functions of the licensee.

11                  ....

12                  9.       Section 2878.5 of the Code states:

13                  In addition to other acts constituting unprofessional conduct within the  
14 meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional  
conduct for a person licensed under this chapter to do any of the following:

15                  (a) Obtain or possess in violation of law, or prescribe, or except as  
16 directed by a licensed physician and surgeon, dentist or podiatrist administer to  
himself or herself or furnish or administer to another, any controlled substance as  
17 defined in Division 10 of the Health and Safety Code, or any dangerous drug as  
defined in Section 4022.

18                  (b) Use any controlled substance as defined in Division 10 of the Health  
19 and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
20 beverages, to an extent or in a manner dangerous or injurious to himself or  
herself, any other person, or the public, or to the extent that the use impairs his or  
21 her ability to conduct with safety to the public the practice authorized by his or  
her license.

22                  (c) Be convicted of a criminal offense involving possession of any  
23 narcotic or dangerous drug, or the prescription, consumption, or  
self-administration of any of the substances described in subdivisions (a) and (b)  
24 of this section, in which event the record of the conviction is conclusive evidence  
thereof.

25                  ....

26                  (e) Falsify, or make grossly incorrect, grossly inconsistent, or  
27 unintelligible entries in any hospital, patient, or other record pertaining to  
narcotics or dangerous drugs as specified in subdivision (b).

10. Section 2878.6 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

11. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

12. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### **REGULATORY PROVISIONS**

14. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the

1 qualifications, functions or duties of a licensed vocational nurse if to a substantial  
2 degree it evidences present or potential unfitness of a licensed vocational nurse to  
3 perform the functions authorized by his license in a manner consistent with the  
public health, safety, or welfare. Such crimes or acts shall include but not be  
limited to those involving the following:

4 (a) Procuring a license by fraud, misrepresentation, or mistake.

5 (b) A conviction of practicing medicine without a license in violation of  
Chapter 5 of Division 2 of the Business and Professions Code.

6 (c) Violating or attempting to violate, directly or indirectly, or assisting in  
7 or abetting the violation of, or conspiring to violate any provision or term of  
Chapter 6.5, Division 2 of the Business and Professions Code.

8 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
9 whether a licensed physician or not, in the performance of or arranging for a  
10 violation of any of the provisions of Article 13, Chapter 5, Division 2 of the  
Business and Professions Code.

11 (e) Conviction of a crime involving fiscal dishonesty.

12 (f) Any crime or act involving the sale, gift, administration, or furnishing  
13 of "narcotics or dangerous drugs or dangerous devices" as defined in Section  
4022 of the Business and Professions Code.

14 15. California Code of Regulations, Title 16, section 2522.5 states:

15 (a) When considering the suspension or revocation of a license on the  
16 ground that a licensed vocational nurse has been convicted of a crime, the Board,  
in evaluating the rehabilitation of such person and his eligibility for a license will  
17 consider the following criteria:

18 (1) Nature and severity of the act(s) or offense(s).

19 (2) Total criminal record.

20 (3) The time that has elapsed since commission of the act(s) or  
offense(s).

21 (4) Whether the licensee has complied with any terms  
22 of parole, probation, restitution, or any other  
sanctions lawfully imposed against the licensee.

23 (5) If applicable, evidence of expungement proceedings  
24 pursuant to Section 1203.4 of the Penal Code.

25 (6) Evidence, if any, of rehabilitation submitted by the  
licensee.

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## DRUGS

16. Demerol, a brand name for meperidine hydrochloride, is a Schedule II controlled substance as designated by Health and Safety Code Section 11055, subdivision (b), and is a dangerous drug pursuant to Business and Professions Code section 4022.

17. Dilaudid, a brand name for hydromorphone, is a Schedule II controlled substance as designated by Health and Safety Code Section 11055, subdivision (b)(1)(K) and is a dangerous drug pursuant to Business and Professions Code section 4022.

18. Morphine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M), and is a dangerous drug pursuant to Business and Professions Code section 4022.

19. Ativan, the brand name for lorazepam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(16), and is a dangerous drug pursuant to Business and Professions Code section 4022.

20. Darvocet, a brand name for propoxyphene napsylate and acetaminophen, is a schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (c), and is a dangerous drug pursuant to Business and Professions Code section 4022.

## FACTS

21. Respondent was employed by Menifee Valley Medical Center ("hospital") in July 2005, first as a nursing assistant, then as a licensed vocational nurse in the Medical-Surgical and Telemetry Units. In November 2006, following licensing as a vocational nurse, Respondent completed a tutorial program on the use of the Pyxis Medstation at the hospital's pharmacy. Pyxis is an automated single-dose medication dispensing system that records information such as the patient's name, physician orders, date and time the medication was withdrawn, and the name of the licensed individual who withdrew the medication. Leftover or unadministered medication must be recorded as wastage in Pyxis. The total amount of medication withdrawn from Pyxis should balance with the charted amount administered to the



1 patient, and any amount wasted. At the completion of the orientation, Respondent was able to  
2 log into Pyxis and access medications using her fingerprint.

3           22. In June 2007, during a routine narcotics audit of Pyxis, numerous  
4 discrepancies attributable to Respondent were discovered by the hospital's staff. A closer  
5 inspection of Respondent's Pyxis activities revealed discrepancies or charting inconsistencies  
6 involving at least 39 patients from March through June 2007. As a licensed vocational nurse,  
7 Respondent was not authorized to administer medication intravenously; Respondent could  
8 withdraw the medications from Pyxis, but she was required to give the medications to a  
9 registered nurse for intravenous administration. As a result of the hospital's investigation,  
10 Respondent was dismissed on or about June 27, 2007, and was subsequently terminated.

11           23. The Division of Investigation (DOI) investigator assigned to the case  
12 sampled eleven of the 39 patient records and summarized the discrepancies as follows:

13           a. Patient 105: Respondent falsified a telephone order for Dilaudid 2  
14 mg. by I.V. every two hours as needed for pain in patient 105's medical record. Pyxis records  
15 reflected that Respondent withdrew four doses of Dilaudid on May 31, 2007, and five doses of  
16 Dilaudid on June 1, 2007. No wastage was recorded. There were no entries in the patient's  
17 Medication Administration Record (MAR) for these nine doses, totaling 18 mg. of Dilaudid.  
18 Respondent consistently charted the patient's pain intensity as 0/10.

19           b. Patient 170: Respondent falsified a telephone order for Demerol  
20 75 mg. by I.V. every three hours as needed for pain in patient 170's medical record. Pyxis  
21 records reflect that Respondent withdrew three doses of Demerol on June 1, 2007. No wastage  
22 was recorded. There were no entries in the patient's MAR for these three doses, totaling 225  
23 mg. of Demerol. Respondent consistently charted the patient's pain intensity as 0/10.

24           c. Patient 124: Respondent falsified a telephone order for Dilaudid 2  
25 mg. by I.V. every two hours as needed for pain in patient 124's medical record. Pyxis records  
26 reflect that Respondent withdrew five doses of Dilaudid on June 14, 2007. No wastage was  
27 reported. There were no entries in the patient's MAR for these five doses, totaling 10 mg. of  
28 Dilaudid. Respondent consistently charted the patient's pain intensity as 0/10.

1 d. Patient 819: Respondent falsified a telephone order for Dilaudid 2  
2 mg. by I.V. every two hours as needed for pain in patient 819's medical record. Pyxis records  
3 reflect that Respondent withdrew five doses of Dilaudid on June 17, 2007. No wastage was  
4 reported. There were no entries in the patient's MAR for these five doses, totaling 10 mg. of  
5 Dilaudid. Respondent consistently charted the patient's pain intensity as 0/10.

6 e. Patient 633: The patient had an authentic physician's order for  
7 morphine 1 mg. by I.V. every three hours as needed for pain. Respondent falsified a telephone  
8 order for Dilaudid 2 mg. by I.V. every two hours as needed for pain in patient 633's medical  
9 record. Pyxis records reflect that Respondent withdrew five doses of Dilaudid on June 24, 2007.  
10 No wastage was reported. There were no entries in the patient's MAR for these five doses,  
11 totaling 10 mg. of Dilaudid. Respondent consistently charted the patient's pain intensity as 0/10.

12 f. Patient 585: The patient had an authentic physician's order for  
13 Dilaudid 1 mg. by I.V. every three hours as needed for pain. Pyxis records reflect that on June  
14 21, 2007, Respondent withdrew two doses of Dilaudid 2 mg., two doses of Ativan 0.5 mg., and  
15 one dose of Darvocet N-100. Respondent recorded wastage for 1 mg. Dilaudid only.  
16 Respondent charted one dose of 0.5 mg. Ativan given to the patient. There were no entries in the  
17 patient's MAR for 4 mg. of Dilaudid, 1 Darvocet tablet, and 0.5 mg. of Ativan. Respondent  
18 consistently charted the patient's pain intensity as 0/10.

19 g. Patient 082: The patient had an authentic physician's order for  
20 Dilaudid 1 mg. by I.V. every four hours as needed for pain. Pyxis records reflect that on June  
21 26, 2007, Respondent withdrew three doses of Dilaudid 2 mg. Wastage was recorded for 2 mg.  
22 There were no entries in the patient's MAR for these three doses of Dilaudid. Respondent  
23 consistently charted the patient's pain intensity as 0/10. Respondent withdrew the last dose of  
24 Dilaudid two hours after the patient had been discharged and transported to another hospital.

25 h. Patient 320: The patient had an authentic physician's order for  
26 Dilaudid 1 mg. by I.V. every three hours as needed for pain. Pyxis records reflect that on June  
27 24, 2007, Respondent withdrew one dose of Dilaudid 2 mg. On June 26, 2007, Respondent  
28 withdrew two doses of Dilaudid 2 mg. On June 27, 2007, Respondent withdrew four doses of



1 Dilaudid 2 mg. No wastage was recorded for any of the withdrawals. There were no entries in  
2 the patient's MAR for these seven doses totaling 14 mg. of Dilaudid. Respondent charted the  
3 patient's pain intensity as 7/10 and the MAR indicated the patient was treated with Vicodin.  
4 Respondent withdrew the last dose of Dilaudid 24 minutes after the patient had been discharged.

5 i. Patient 973: The patient had an authentic physician's order for  
6 morphine 2 mg. by I.V. every four hours as needed for pain. Pyxis records reflect that  
7 Respondent withdrew three doses of morphine SO 4 mg. on June 27, 2007. No wastage was  
8 reported. There were no entries in the patient's MAR for these three doses, totaling 12 mg. of  
9 morphine.

10 j. Patient 285: The patient had an authentic physician's order for  
11 morphine sulphate 2 mg. by I.V. every one hour as needed for pain. Pyxis records reflect that  
12 Respondent withdrew three doses of morphine SO 4 mg. on June 27, 2007. No wastage was  
13 reported. There were no entries in the patient's MAR for these three doses, totaling 12 mg. of  
14 morphine. Respondent charted that the patient was in no pain at 0800 and that the I.V. was  
15 discontinued at 1115 hours. Respondent withdrew the last dose of morphine over 90 minutes  
16 after the patient had been discharged.

17 k. Patient 293: The patient had an authentic physician's order for  
18 Dilaudid 1 mg. by I.V. every three hours as needed for pain. Pyxis records reflect that on June  
19 27, 2007, Respondent withdrew two doses of Dilaudid 2 mg. No wastage was recorded. There  
20 were no entries in the patient's MAR for these three doses of Dilaudid. Respondent charted that  
21 the patient was taken to the operating room at 1440 hours. Respondent withdrew both doses of  
22 Dilaudid totaling 4 mg. while the patient was not at the unit.

23 24. Based on the review of eleven patient records, the DOI investigator  
24 concluded that Respondent illegally obtained the following quantities of controlled substances:

25 Dilaudid: 74 mg  
26 Demerol: 225 mg.  
27 Morphine: 24 mg.  
28 Darvocet: 1 tablet  
Ativan: 0.5 mg.

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1                   25.     On or about May 15, 2008, the DOI investigator conducted a voluntary  
2 interview with Respondent at the Division's Ontario Field Office. The investigator explained the  
3 nature of the complaint and the specific allegations against Respondent. Respondent admitted to  
4 the investigator that she had a substance abuse problem. Respondent stated that she falsified  
5 doctors' orders to obtain the controlled substances and took drugs intended for patients.  
6 Respondent further admitted that her drug of choice was Dilaudid; she sought the drugs for her  
7 own use and injected them intramuscularly. Respondent voluntarily provided a urine sample  
8 which was submitted to Quest Diagnostics for testing, and which subsequently tested positive for  
9 marijuana metabolites.

10                   26.     Based on the results of the DOI investigation, the matter was referred to  
11 the Riverside District Attorney's Office for prosecution.  
12

### 13                                   **FIRST CAUSE FOR DISCIPLINE**

#### 14                   **(December 4, 2008 Criminal Conviction for Obtaining Controlled Substances by Fraud)**

15                   27.     Respondent has subjected her license to disciplinary action under sections  
16 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is  
17 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.  
18 The circumstances are as follows:

19                           a.     On or about December 4, 2008, in a criminal proceeding entitled  
20 *People of the State of California v. Alta Jane Harsh*, in Riverside County Superior Court, case  
21 number RIF145850, Respondent was convicted on her plea of guilty of violating two felony  
22 counts of violating Health and Safety Code section 11173, subdivision (a), obtaining controlled  
23 substances by fraud and deceit.

24                           b.     As a result of the conviction, on or about December 4, 2008,  
25 Respondent was sentenced to 36 months formal probation, which required Respondent attend  
26 and complete a substance abuse program pursuant to Penal Code section 1210.1. Respondent  
27 was further required to attend Narcotics Anonymous or an alternative program, not possess or  
28 associate with anyone who possesses controlled substances, submit to random chemical tests,

1 submit to a Fourth Amendment Waiver, and pay \$2,658 in fees, fines, restitution, and substance  
2 abuse program costs.

3 c. The facts that led to the conviction were that between March and  
4 June 2007, while employed as a licensed vocational nurse, Respondent illegally obtained  
5 controlled substances from her employer by fraud and deceit as detailed in paragraphs 21-25,  
6 above.

## 7 **SECOND CAUSE FOR DISCIPLINE**

### 8 **(Unprofessional Conduct - Commission of Dishonest Acts)**

9 28. Respondent has subjected her license to disciplinary action under section  
10 2878, subdivision (j) of the Code in that on or about March 2007 to June 2007, while employed  
11 as a licensed vocational nurse, Respondent stole controlled substances from her employer using  
12 fraud and deceit, as detailed in paragraphs 21-25, above.

## 13 **THIRD CAUSE FOR DISCIPLINE**

### 14 **(Unprofessional Conduct - Possession of Controlled Substances)**

15 29. Respondent has subjected her license to disciplinary action under section  
16 2878.5, subdivision (a) of the Code in that on or about March 2007 and June 2007, Respondent  
17 possessed, and admitted to furnishing to herself the controlled substances Dilaudid, Demerol,  
18 morphine, Darvocet and Ativan without a prescription, in violation of section 4059 of the Code,  
19 as detailed in paragraphs 21-25, above.

## 20 **FOURTH CAUSE FOR DISCIPLINE**

### 21 **(Unprofessional Conduct - Illegal Use of Controlled Substances)**

22 30. Respondent has subjected her license to disciplinary action under section  
23 2878.5, subdivision (b) of the Code in that on or about May 15, 2008, in an interview with the  
24 DOI investigator, Respondent voluntarily admitted that she stole drugs for her own use and  
25 injected them intramuscularly. Additionally, Respondent provided a urine sample on May 15,  
26 2007 which subsequently tested positive for marijuana, as detailed in paragraph 25, above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Conviction of a Drug-Related Offense)**

3 31. Respondent has subjected her license to disciplinary action under section  
4 2878.5, subdivision (c) of the Code in that on or about December 4, 2008, Respondent was  
5 convicted of two felony counts of obtaining controlled substances by fraud and deceit as detailed  
6 in paragraphs 21-25, above.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Falsification of Hospital Records**

9 **Pertaining to Controlled Substances)**

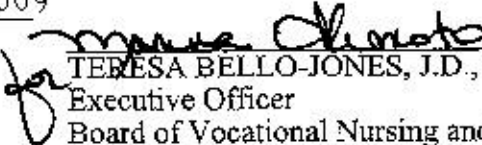
10 32. Respondent has subjected her license to disciplinary action under section  
11 2878.5, subdivision (e) of the Code in that on or about March 2007 to June 2007, while  
12 employed as a licensed vocational nurse, Respondent falsified hospital records to fraudulently  
13 obtain controlled substances as detailed in paragraphs 21-25, above.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
16 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric  
17 Technicians issue a decision:

- 18 1. Revoking or suspending Vocational Nurse License Number VN 223312,  
19 issued to Alta Jane Harsh;
- 20 2. Ordering Alta Jane Harsh to pay the Board of Vocational Nursing and  
21 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,  
22 pursuant to Business and Professions Code section 125.3;
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: February 23, 2009

25   
26 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
27 Executive Officer  
28 Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
Complainant

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